THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.20693 OF 2005

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ORDER:

This Writ Petition is filed seeking a declaration that the action of the 1st respondent in proposing to conduct public auction in respect of leasehold rights of the land to an extent of A.5.70 cents in Sy.No.276 of Marlapadu village, Tangutur Mandal as arbitrary and illegal.

Petitioner claims to be the cultivating tenant in respect of the above land, which belongs to Sri Venugopala Swamy Temple, Marlapadu village. After the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the Act") came into force, when the 1st respondent initiated proceedings for eviction, enforcing Section 82(1) of the Act, he filed an application before the concerned Assistant Commissioner of Endowments seeking a declaration that he is a landless poor. The said claim was rejected by the Assistant Commissioner of Endowments by order dated 1.08.2003 and the same was confirmed in appeal by the Regional Joint Commissioner of Endowments by order dated 17.07.2004. Questioning the said order, petitioner filed W.P.No.6886 of 2005. Pending the said Writ Petition, this Court in W.P.M.P.No.9182 of 2005 passed an order on 30.03.2005 as under:

> " .. the petitioner is given liberty to make a representation to the competent authority i.e., the second respondent, to fix fair rent and upon such fixation of fair rent, the second respondent may consider the same for the continuous possession of the petitioner upon the assurance of the petitioner for payment of such fair rent.
>
> The entire exercise of filing of representation by the petitioner and consideration of the same by the second respondent shall be completed within a period of three weeks from today. Till such time, there shall not be dispossession of the petitioner from the premises in question.
>
> It is further made clear that if, eventually, the petitioner is dispossessed from the premises in question, the same would be subject to the result of the Writ Petition."

Pursuant thereto, by order dated 29.04.2005, the Assistant Commissioner of Endowments fixed fair rent at Rs.41,000/- per annum and accordingly, petitioner

paid the same on 10.05.2005. However, this Court after hearing both parties dismissed Writ Petition No.6886 of 2005 by order dated 23.08.2005 confirming the finding that the petitioner was not a landless poor person for the purpose of sub-section (2) of Section 82 of the Act.

Thereafter, this Writ Petition was filed on 20.09.2005 alleging that the 3rd respondent, who claims to be the successful bidder in the auction said to have been conducted on 30.03.2005 by the 1st respondent in respect of the leasehold rights of the land in question has been trying to interfere with his possession. It is alleged that no such auction took place, but the 1st respondent at the instance of the 3rd respondent had fabricated a letter dated 29.03.2005 in which an auction was proposed to be conducted on 31.03.2005 and the 2nd respondent was requested to depute a departmental officer. The petitioner while claiming that he has been continuing in possession of the land in question, alleged that respondents 1 and 3 have been adopting fraudulent practices to dispossess him illegally. Hence, this Writ Petition.

The 2nd respondent-Assistant Commissioner of Endowments filed counter-affidavit stating that as per the auction notice dated 29.05.2005 auction was conducted on 30.03.2005 in which the 3rd respondent was declared as the successful bidder; however, it was admitted that the said auction has not been approved so far.

The respondent No.1-Temple filed a separate counter-affidavit stating that the auction, under the impugned notice, was conducted on 30.03.2005 in respect of leasehold rights of the land in question and that the 3rd respondent was declared as the highest bidder. Though it is admitted that a sum of Rs.41,000/- was paid by the petitioner towards fair rent, it is stated that the said amount was refunded to the petitioner by way of a cheque; but the petitioner refused to receive the same. It is further stated that possession of the land in question was delivered to the 3rd respondent after dismissal of W.P.No.6886 of 2005, who raised Bengalgram and also harvested the crop. It is pleaded that since admittedly, the petitioner is not a landless poor person, he is not entitled to the benefit under Section 82(2) of the Act, and therefore, he cannot be granted any relief.

The 3rd respondent, who is the highest bidder, also filed a counter-affidavit on the same lines stating that possession of the land was delivered to him and that he has been continuing in possession as on today.

I have heard the learned counsel for the parties and perused the material on record.

It is to be noted that the claim of the petitioner that he is a landless poor person was negatived by the 2nd respondent on 1.08.2003. Appeal preferred by the petitioner was dismissed by the Joint Commissioner of Endowments by order dated 17.07.2004. However, it appears that the petitioner failed to take any immediate steps challenging the said orders, but filed W.P.No.6886 of 2005 some time in the year 2005 and interim stay of dispossession was granted only on 30.03.2005. The case of the respondents is that in the meanwhile the leasehold rights were put to auction, which was held on 30.03.2005 and after the dismissal of W.P.No.6886 of 2005 the 3rd respondent/successful bidder was put in possession. In the absence of any acceptable material, I do not find any justifiable reason to disbelieve the version of respondents 1 and 3 that auction was already conducted on 30.03.2005 and the 3rd respondent, who was the successful bidder was put in possession.

The only further contention raised by the petitioner is that though under the impugned notice, auction was proposed to be conducted on 31.03.2005, the same was not conducted on that day and that the respondents 1 and 3 came up with a false plea that the auction was preponed and conducted on 30.03.2005 itself to defeat the rights of the petitioner.

The fact that auction was conducted on 30.03.2005, though initially it was proposed to be held on 31.03.2005 has not been disputed by the respondents. However, it was explained by the 1st respondent that auction date was advanced from 31.03.2005 and after giving wide publicity in the village, auction was conducted on 30.03.2005.

Yet another contention raised by the learned counsel for the petitioner is that since admittedly the auction conducted on 30.03.2005 has not been approved, the same is not valid and possession, if any, delivered to the 3rd respondent cannot be recognized as valid. I am unable to agree with the said contention. Under sub-rule

(3) of Rule 16 of the Rules made under G.O.Ms.No.379, dated 11.3.2000, if no orders of lease approving or rejecting the lease are received from the competent authority within 30 days from the date of receipt of the lease report, the lease shall be deemed to have been approved. Hence, I am unable to hold that the lease granted in favour of 3rd respondent is invalid merely on the ground that there was no approval from the competent authority.

In the circumstances, Mandamus as prayed for cannot be granted; however, keeping in view the observations made by this Court in W.P.M.P.No.9182 of 2005, I am of the opinion that it would be appropriate to refund the fair rent of Rs.41,000/- paid by the petitioner in compliance with the interim orders of this Court.

Accordingly, the Writ Petition is disposed of with a direction to the 1st respondent-Devasthanam to refund the sum of Rs.41,000/- paid by the petitioner towards fair rent within a period of two weeks from the date of receipt of this order.

The Writ Petition is accordingly, disposed of. No costs.

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(G. ROHINI, J.)

23rd March, 2006.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.20693 OF 2005

23rd March, 2006.

Between:

Edara Chenchuramaiah. .. Petitioner.

And

The Manager, Sri Venugopala Swamy

Temple, Marlapadu (v), Tangutur (M),

Prakasam District and two others. .. Respondents.

THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION No.20693 OF 2005

23rd March, 2006.